

Second, the Office Action asserts that Fig. 3 introduces new matter in showing three cavities that are partially filled with the active principle. However, the original disclosure specifically identifies an alternative embodiment containing "a plurality of cavities... distributed on the downstream face of the barrier" (see page 6, lines 21-23). Applicants included Fig. 3 with the Amendment filed on July 22, 2004. Significant discussion had been undertaken regarding the content specifically of Fig. 3 in discussion with Examiner Casler in a July 12, 2004 telephone interview. Examiner Casler agreed that Applicants' cancellation of Figs. 4-8 would overcome the then-pending new matter rejections as pertaining to the figures. Applicants indicated the results of this discussion in the Amendment filed on July 22, 2004, which presented Figs. 2 and 3 in their current form.

In reply, in a Rejection dated July 15, 2005, the Examiner once again indicated her belief that Fig. 3 introduces new matter in showing a plurality of cavities in a specific configuration. Her argument was that the original disclosure only mentions that there is at least one cavity but does not support how more than one cavities are arranged within the barrier. As indicated above, this assertion misquotes Applicants' disclosure.

Applicants renew their argument that the exemplary embodiments depicted in Figs. 2 and 3 are illustrative of the features recited in the claims, and are not intended to depict any specific configurations beyond the features, as recited in the claims. These drawings (1) were provided in response to an objection raised under 37 C.F.R. §1.83 in a previous Office Action, and (2) meet the requirements of 37 C.F.R. §1.83. These drawings are not submitted to overcome any insufficiency of the specification due to lack of enabling disclosure, or otherwise inadequate disclosure therein, or in any attempt to supplement the original disclosure for the purpose of interpretation of the scope of any claim in violation of 37 C.F.R. §1.81(c). Read in conjunction with the already referenced language disclosing partially filled cavities, Fig. 3 cannot reasonably be considered to present new matter.

Applicants have fully complied with the requirements for the drawing under the Rules and the law. The ongoing objection to Fig. 3 as introducing new matter represents an overly technical interpretation of the Rules that is unreasonable and unsupportable. In an effort to expedite prosecution of this application, Applicants' representatives have repeatedly engaged the Examiners in seeking guidance as to how the Examiners would propose to overcome the drawing objections. As indicated above, Examiner Casler indicated his belief that the cancellation of Figs. 4-8 was satisfactory. Examiner Williams, when queried, was unable to offer any suggestions regarding resolution of this matter. As such, and should an objection to Fig. 3 be maintained, Applicants request a specific proposal from the Patent Office regarding how it is believed that Applicants can meet the requirement to depict every feature recited in the claims as enabled, and supported by the written description, as originally filed in a drawing such as Fig. 3, and yet avoid ongoing objections to those drawings that are, in Applicants' belief, improper.

Applicants believe that all of the issues raised regarding Fig. 3 throughout the lengthy prosecution of this application have been adequately addressed, particularly in light of Applicants' express disclaimer, in Applicants' response to a previous Office Action filed on September 14, 2005, of any specific configuration other than that which can be imputed to appropriate interpretation of the positively recited claim language.

In view of the foregoing, Applicants respectfully request that the objections to the drawings be withdrawn.

II. Allowable Subject Matter

The Office Action, on page 5, indicates that claims 4, 9 and 12 recite allowable subject matter. Specifically, the Office Action indicates that these claims would be allowable if rewritten in independent form to include all of the features of the base claim and any intervening claims. Applicants appreciate this indication of allowability, but submit that at

least independent claim 1, from which these claims directly depend, is allowable for at least the reasons set forth below.

III. Claims 1-3, 5, 6, 8 and 10 Recite Allowable Subject Matter

The Office Action, on page 3, rejects claims 1-3, 5, 8 and 10 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,945,050 to Sanford; and rejects claim 6 under 35 U.S.C. 103(a) as being unpatentable over Sanford. These rejections are respectfully traversed.

The Office Action asserts that the features of claims 1-3, 5, 8 and 10 are anticipated by Sanford, specifically, Figs. 8a-8b and column 8, line 52 onward. This assertion is incorrect for at least the following reasons. Sanford does not teach, nor would it reasonably have suggested, the feature of a "resistant barrier which ensures a good propagation of the shock wave," as is positively recited in claim 1.

This feature is not even addressed by the Office Action. Nor is this feature mentioned in, or relevant to, the device disclosed in Sanford. Sanford relies on the forward motion of the macroprojectile (50) to transfer kinetic energy to the particles (52). In other words, the macroprojectile (50) of Sanford is not intended to allow the shock wave to propagate, *i.e.* travel through it. Rather, the macroprojectile (50) is literally blasted forward and then abruptly stopped by the stopping means (58) allowing the particles to continue through an aperture toward a target cell or tissue (see Sanford at col. 8, lines 52-64). As such, the Office Action's failure to address the feature of a resistant barrier which ensures a good propagation of the shock wave, cannot be realized by any teachings of Sanford.

For at least the above reason, Sanford cannot reasonably be considered to teach, or even to have suggested, the combination of all of the features positively recited in independent claim 1. Further, claims 2, 3, 5, 6, 8 and 10 are also neither taught, nor would they have been suggested, by Sanford for at least the respective dependence of these claims

directly or indirectly on independent claim 1, as well as for the separately patentable subject matter that each of these claims recites.

Accordingly, reconsideration and withdrawal of the rejections of claims 1-3, 5, 6, 8 and 10 as being anticipated by or unpatentable over Sanford are respectfully requested.

IV. Applicants Have Been Prejudiced by the Prosecution of this Application To Date

Applicants respectfully request, under the provisions of MPEP §707.02 that Supervisory Patent Examiner oversight be reflected in any next Office Action that may issue regarding this application. In support of this request, Applicants respectfully submit that this application has been subject to at least piecemeal prosecution. The application was filed as a National stage of a PCT on December 19, 2001. A first substantive Office Action issued on September 10, 2003. Applicants made several attempts to contact the Examiner then responsible for the application in an effort to schedule a personal interview. The Examiner ultimately granted a personal interview on December 16, 2003 during which all of the substantive issues were discussed. Applicants filed an Amendment in reply to the September 10 Office Action, and in consideration of the December 16 personal interview, on January 6, 2004. The Patent Office mailed a Final Rejection on March 24, 2004. Applicants' representative then made several attempts to contact the Examiner responsible for the application, and her Supervisor. The Supervisor ultimately left a message that the Examiner would be unavailable for awhile. Applicants filed an Amendment and Request for Continued Examination on July 22, 2004. Applicants filed a first Status Inquiry Letter on January 24, 2005. The Patent Office responded by facsimile on May 18, 2005 indicating that "Application 10018469 is currently in status: 61 /FINAL REJECTION MAILED as of 3/23/2004. The application is currently assigned to THOMPSON, KATHRYN. Group Art Unit: 3763. The docketed Class/Subclass is 604/068.000." In response, Applicants' representative contacted Examiner Lucchesi on May 31, 2005. Examiner Lucchesi returned

Applicants' representative's phone call to indicate that Examiner Thompson was no longer on the case and that he was reassigning the application. Examiner Lucchesi promised in a voice mail to Applicants' representative to telephone Applicants' representative with the name of the Examiner to whom the application was being assigned. When no further phone call was received, Applicants filed a second Status Inquiry detailing much of the above on June 29, 2005. An Office Action was mailed on July 15, 2005 in which the new Examiner, Examiner Williams, essentially took Applicants back to initial prosecution of the application, which had been subject to significant examination and through two rejections already. Applicants conducted a telephone interview with Examiner Williams on August 23, 2005 and filed a Response on September 14, 2005. The Patent Office mailed a communication to Applicants' representative on December 12, 2005 indicating that ex parte prosecution was suspended for a period of one month from the date of the letter, with no other information provided.

On January 20, 2006, Applicants' representative contacted Examiner Williams to inquire as to the status of further prosecution. The Examiner indicated that she would have to do some research and would get back to Applicants' representative with the status of the application. Having heard nothing from Examiner Williams, Applicants' representative again contacted her on January 27, during which telephone conversation the Examiner indicated that the results of an additional prior art search that she had ordered were due in the next couple of weeks. Examiner Williams indicated that action would be forthcoming soon after receipt of the results of that search. It is this March 31, 2006 Office Action to which Applicants today respond.

V. Conclusion

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1-3, 5, 6,

8 and 10, in addition to the indicated allowable subject matter of claims 4, 9 and 12, are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the telephone number set forth below.

Respectfully submitted,



William P. Berridge
Registration No. 30,024

James E. Golladay, II
Registration No. 58,182

WPB:JEG/tls

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OLIFF & BERRIDGE, PLC
P.O. Box 19928
Alexandria, Virginia 22320
Telephone: (703) 836-6400

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